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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	85867859
Applicant	Ana Rosa Neto Celestino Campina
Applied for Mark	CASA DO FADO
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Submission	Reply Brief
Attachments	APPLICANT'S REPLY BRIEF_CASA DO FADO_Design.pdf(120184 bytes)
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Date	12/14/2014

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

APPLICANT: ANA ROSA NETO CELESTINO CAMPINA; and **CARLOS ALBERTO** DAMIAÕ BARROQUEIRO) SERIAL NO: 85,867,859 FILED: March 6, 2013 MARK: Casa do fado (& Design) **EXAMINING** Zachary R. Sparer ATTORNEY: LAW OFFICE: 115

APPLICANT'S REPLY BRIEF

Applicant's mark is different from the Cited Marks in appearance, sound, meaning, and commercial impression.



(Applicant's Mark)

(Cited Marks)

The Examining Attorney argues that the dominant portion of the marks is "FADO" and therefore the marks are similar. The Examining Attorney affords too little weight to the

design portions of the marks, which are the largest and most prominent elements of the marks. Consumers encountering the marks will first see the highly distinctive Portuguese guitar and "spirals" designs, which are completely different. Therefore, the designs—not the word FADO—are the dominant elements of the marks.

Further, the Examining Attorney argues that the addition of the "weakly suggestive" terms "Casa do" is insufficient to distinguish the marks. The Examining Attorney concludes, but has not submitted any evidence supporting a finding that "Casa do" is "weakly suggestive" for the services at issue. On the contrary, "Casa do" is highly distinctive for restaurant services and should be afforded full weight in the analysis particularly because it is the first term in the mark. Consumers are generally more inclined to focus on the first word, prefix or syllable in any trademark or service mark. See Palm Bay Imps., Inc. v Veuve Clicquot Ponsardin Maison Fondee En 1772, 396 F. 3d 1369, 1372, 73 USPQ2d 1689, 1692 (Fed. Cir. 2005); see also Mattel Inc. v. Funline Merch. Co., 81 USPQ2d 1372, 1374-75 (TTAB 2006); Presto Prods., Inc. v. Nice-Pak Prods., Inc., 9 USPQ2d 1895, 1897 (TTAB 1988) ("it is often the first part of a mark which is most likely to be impressed upon the mind of a purchaser and remembered" when making purchasing decisions."). As the first term in the mark, "Casa do" will leave a strong impression in the minds of consumers. Inasmuch as Applicant's Mark and the Cited Marks do not share "Casa do", the marks are different in appearance, sound, meaning, and commercial impression.

Overall, the Examining Attorney has improperly dissected the marks and afforded insufficient weight to the first terms "Casa do" and the highly distinctive and dominant "Portuguese guitar" design. However, when the marks are considered in their entireties,

the marks are different in appearance, sound, meaning, and commercial impression owing

to the additional wording "Casa do" and the highly distinctive designs.

Last, Applicant respectfully submits that the Examining Attorney's burden is to

show a likelihood of confusion, not the mere possibility of confusion. In re Hughes

Aircraft Company, 222 U.S.P.Q. 263, 264 (TTAB 1984) ("the Trademark Act does not

preclude registration of a mark where there is a possibility of confusion as to source or

origin, only where such confusion is *likely*") (emphasis added). Given the clear

differences between the marks in appearance, sound, meaning, and overall commercial

impression, confusion is not likely. Accordingly, the Examining Attorney's refusal

should be reversed, and Applicant's Mark should be published for opposition.

CONCLUSION

Based on the foregoing, there is no likelihood of confusion between Applicant's

Mark and the Cited Marks. WHEREFORE, Applicant prays that the Examining

Attorney's refusal of registration be reversed, and that Applicant's Mark be published for

opposition.

Respectfully Submitted,

Dated: December 14, 2014

By /Paulo A. de Almeida

Paulo A. de Almeida

Patel & Almeida, P.C. Attorneys for Applicants,

ANA ROSA NETO CELESTINO

CAMPINA; and

CARLOS ALBERTO DAMIAÕ

BARROQUEIRO

3